

House Bill 230

By: Representatives Tumlin of the 38th and Morris of the 155th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 2 of Title 48 of the Official Code of Georgia Annotated,
2 relating to state administration of revenue and taxation, so as to reenact certain provisions
3 regarding penalties, fees, and costs with respect to tax deficiencies; to reenact procedures
4 with respect thereto; to reenact criminal penalties with respect to false returns or failure to
5 obey certain subpoenas or orders; to reenact certain provisions regarding local penalties, fees,
6 and costs with respect to certain tax deficiencies; to reenact procedures with respect thereto;
7 to reenact certain powers, duties, and authorities of the state revenue commissioner with
8 respect to the foregoing; to provide for a contingent effective date; to provide for automatic
9 repeal under certain circumstances; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 2 of Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
13 administration of revenue and taxation, is amended by adding new Code sections to read as
14 follows:

15 "48-2-62.

16 (a) In addition to all other penalties provided under this title or any other law, the
17 commissioner may by regulation impose a cost of collection fee of 20 percent of any
18 deficiency assessed for any taxable period ending or transactions occurring after July 1,
19 2007. This fee shall be in addition to all other applicable penalties, fees, or costs. The
20 commissioner shall have the right to waive any collection fee when it is demonstrated that
21 any deficiency of the taxpayer was not due to negligence, intentional disregard of
22 administrative rules and regulations, or fraud. Notwithstanding any other provision of law,
23 the department is authorized to retain all funds received as collection fees imposed by the
24 commissioner for use in defraying the cost of collection of deficient taxes. Any such funds
25 not expended for this purpose in the fiscal year in which they are generated shall be
26 deposited in the state treasury; provided, however, that nothing in this Code section shall

1 be construed so as to allow the department to retain any funds required by the Constitution
2 of Georgia to be paid into the state treasury; and provided, further, that the department shall
3 comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act,'
4 except Code Section 45-12-92, prior to expending any such funds.

5 (b) In addition to all other penalties provided under this title or any other law, the
6 commissioner may pursuant to regulation impose a cost of collection fee of 50 percent of
7 any deficiency assessed for taxable periods ending or transactions occurring on or before
8 July 1, 2007, regardless of when due. This fee shall be in addition to all other applicable
9 penalties, fees, or costs. The commissioner shall have the right to waive any collection fee
10 when it is demonstrated that any deficiency of the taxpayer was not due to negligence,
11 intentional disregard of administrative rules and regulations, or fraud. Notwithstanding any
12 other provision of law, the department is authorized to retain all funds received as
13 collection fees imposed by the commissioner for use in defraying the cost of collection of
14 deficient taxes. Any such funds not expended for this purpose in the fiscal year in which
15 they are generated shall be deposited in the state treasury; provided, however, that nothing
16 in this Code section shall be construed so as to allow the department to retain any funds
17 required by the Constitution of Georgia to be paid into the state treasury; and provided,
18 further, that the department shall comply with all provisions of Part 1 of Article 4 of
19 Chapter 12 of Title 45, the 'Budget Act,' except Code Section 45-12-92, prior to expending
20 any such funds.

21 (c) The provisions of subsections (a) and (b) of this Code section shall not apply to any
22 account which has been protested pursuant to Code Section 48-2-46 as of July 1, 2007, and
23 which does not become final, due, and owing, or to any account on which the taxpayer is
24 remitting timely payments under a payment agreement negotiated with the commissioner
25 prior to July 1, 2007.

26 (d) No cost of collection fee shall be authorized under this Code section with respect to
27 any transaction or any taxable period for which a deficiency was assessed and a fee
28 imposed pursuant to the former provisions of Code Section 48-16-10 as they existed
29 immediately prior to July 1, 2007.

30 48-2-63.

31 The commissioner may, for the purpose of collecting any delinquent taxes due from a
32 taxpayer, contract with any debt collection agency or attorney doing business within or
33 outside this state for the collection of such delinquent taxes, including penalties and interest
34 thereon.

1 48-2-64.

2 (a) As used in this Code section, the term 'return' means and includes any return,
3 declaration, or form prescribed by the commissioner with respect to the taxes covered by
4 the former provisions of Chapter 16 of this title as they existed immediately prior to July
5 1, 2007.

6 (b) In addition to all other penalties provided under this title or any other law, any person
7 who willfully fails to make a return or willfully makes a false return or conspires to do so,
8 or who willfully fails to pay taxes owing, withheld, or collected, with intent to evade
9 payment of the tax owed or the amount withheld or collected, or any part thereof, or who
10 conspires to do so shall be guilty of a felony and, upon conviction thereof, shall be
11 punished by imprisonment for not less than one nor more than three years or by a fine of
12 not more than \$5,000.00, or both.

13 (c) Any person who fails to obey a subpoena or order of the commissioner issued pursuant
14 to Code Section 48-2-8 for purposes of enforcing this chapter shall be guilty of a
15 misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than
16 \$25.00 and not more than \$100.00 or imprisoned in the county jail for not more than three
17 months, or both. For any subsequent offense such person shall, upon conviction thereof,
18 be punished by imprisonment for not more than one year or by a fine of not more than
19 \$1,000.00, or both.

20 48-2-65.

21 (a) In addition to all other penalties provided under this title or any other law, the
22 administering governing authority may by ordinance or resolution impose a cost of
23 collection fee of 50 percent of any deficiency levied for taxable periods ending on or before
24 July 1, 2007, regardless of when due. This fee shall be in addition to all other applicable
25 penalties, fees, or costs. The local collection official shall have the right to waive any
26 collection fee when it is demonstrated that any deficiency of the taxpayer was not due to
27 negligence, intentional disregard of local ordinances or resolutions, or fraud.

28 (b) The provisions of subsection (a) of this Code section shall not apply to any account
29 which is under appeal as of July 1, 2007, and which does not become final, due, and owing,
30 or to any account on which the taxpayer is remitting timely payments under a payment
31 agreement negotiated with the local collection official prior to July 1, 2007.

32 (c) No cost of collection fee shall be authorized under this Code section with respect to any
33 transaction or any taxable period for which a deficiency was assessed and a fee imposed
34 pursuant to the former provisions of Code Section 48-16A-10 as they existed immediately
35 prior to July 1, 2007."

SECTION 2.

This Act shall become effective July 1, 2007; provided, however, that this Act shall only become effective if HB 129, relating to the repeal of Chapters 16 and 16A of Title 48 of the Official Code of Georgia Annotated, is passed, becomes law, and becomes effective on or before June 30, 2007; otherwise, this Act shall be void and shall be automatically repealed on July 1, 2007.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.